

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

DAVID WAYNE BARRON,
Plaintiff,

v.

ANDREW PALLITO, PRISON HEALTH
SERVICES, INC., DR. DELORES
BURROUGHS-BIRON, DR. BALLARD,
DR. GARRY WEISCHEDEL, RANDY
PORTER, THERESA STONE, KEVIN
JENKINS, JODI BARRIERE and
MENTAL HEALTH MANAGEMENT,
INC.,

Defendants

File No. 1:09-cv-209-jgm

ORDER

The Magistrate Judge's Report and Recommendation was filed April 4, 2011.
(Doc. 11.) After de novo review and absent objection, the Report and
Recommendation is AFFIRMED, APPROVED and ADOPTED. See 28 U.S.C. §
636(b)(1).

Mr. Barron's motion for final judgment and for substantive injunctive relief (Doc.
73) is DENIED. Mr. Barron's motion for an emergency injunction that would bar the
Vermont Department of Corrections from transferring him to another prison facility prior
to the conclusion of this litigation (Doc. 74) is DENIED. Defendants Dr. Ballard and
Mental Health Management, Inc., two of the ten remaining Defendants in this case,
have moved to dismiss the claims against them. (Doc. 75.) Their motion is GRANTED,
and Mr. Barron is granted leave to replead his claims against these two defendants
within thirty days of this Order. His amendment will relate back to his original complaint,
and he need not replead all his claims against other parties.

Federal Rule of Civil Procedure 15(c) is “to be liberally construed, particularly where an amendment does not ‘allege a new cause of action but merely . . . make[s] defective allegations more definite and precise.’” Siegel v. Converters Transp., Inc., 714 F.2d 213, 216 (2d Cir. 1983). Furthermore, *pro se* submissions filed by incarcerated plaintiffs are liberally construed. Triestman v. Fed. Bureau of Prisons, 470 F.3d 471, 475 (2d Cir. 2006) (recognizing “an obligation on the part of the court to make reasonable allowances to protect *pro se* litigants from inadvertent forfeiture of important rights because of their lack of legal training”). Mr. Barron’s Second Amended Complaint, filed in two parts, was hand-written, and he claims to have had difficulty accessing his legal files.

Three defendants, Prison Health Services, Inc., Dr. Dolores Burroughs-Biron, and Dr. Garry Weischedel have already answered the Second Amended Complaint. (Docs. 49, 58, 64.) Defendants Andrew Pallito, in his official capacity, Theresa Stone, Randy Porter, Jodi Barriere, and Kevin Jenkins have moved to dismiss the claims against them (Doc. 57), and their motion was denied without prejudice (Doc. 70). They are directed to answer the Second Amended Complaint within twenty days of this Order.

This matter is returned to Magistrate Judge John M. Conroy for further proceedings.

It is further certified that any appeal taken in forma pauperis from this Order would not be taken in good faith because such an appeal would be frivolous. See 28 U.S.C. § 1915(a)(3).

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 23rd day of June, 2011.

/s/ J. Garvan Murtha

Honorable J. Garvan Murtha
District Judge